

**STATE/ENVIRONMENTAL PROTECTION AGENCY
PARTNERSHIP AGREEMENT**

(SEPA)

FISCAL YEAR 1997

**CONSOLIDATED COMPLIANCE AND
ENFORCEMENT AGREEMENT**

**IMPLEMENTING REQUIREMENTS OF
THE CLEAN AIR ACT, THE CLEAN WATER ACT,
FIFRA, AND THE SAFE DRINKING WATER ACT**

The goal of environmental enforcement is not only to punish polluters and poachers, but -- by means of timely and appropriate action against significant violators -- to deter others.

The goal is not to close down industries that built the American economy, but to motivate them -- out of enlightened self-interest -- to clean their own house.

--Council on Environmental Quality
Twentieth Annual Report



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INTRODUCTION

This Consolidated Compliance and Enforcement Agreement is entered into between the Alaska Department of Environmental Conservation (ADEC) and the United States Environmental Protection Agency (EPA) for the purposes stated. It is adopted by reference in, and is considered a part of, the Alaska State/Environmental Protection Agency Partnership Agreement (SEPA).

The State of Alaska and EPA, Region 10, agree that ensuring compliance with environmental requirements is an essential element of an effective performance partnership agreement, and/or any other environmental protection program. Fostering innovation, pollution prevention, and a “beyond compliance ethic” are important factors, which must be accompanied by the certainty of adequate compliance monitoring and effective deterrent enforcement by the regulators.

The State and EPA each have important and valuable roles in ensuring compliance, even where a state has program primacy. Our goal is to maximize use of our combined resources by implementing complementary strategies to promote and maintain compliance.

Until more specific agreements concerning roles, strategies, and relationships are developed, we are committed to working in a spirit of partnership, and will specifically promote trust and mutual respect for the contributions of the other agency, within our respective agencies.

Wherever EPA is used in this agreement, it means EPA, Region 10, and includes the Alaska Operations Office, when appropriate.

ADEC and EPA propose to provide a level of monitoring, surveillance, and enforcement within Alaska to help assure that all environmental activities within the state are carried out in accordance with federal and state requirements.

The policies and procedures outlined in this Agreement in no way alter the statutory or regulatory authority of ADEC and EPA, nor do they relieve any regulated person from achieving compliance

Addressing and Resolving Conflicts

If conflict or disagreement occurs regarding interpretation of this Agreement, EPA and ADEC will resolve the issue through negotiation and document that action in writing.

If the agencies cannot resolve the issue at the staff level, they will raise it to the next appropriate organizational level.

ADEC Enforcement Manual

Further guidance for carrying out a successful enforcement action is contained in ADEC's Enforcement Manual, dated May 1991. This manual is scheduled for further revisions, which may vary the proposed compliance/enforcement response(s). The introduction to ADEC Enforcement Manual states:

Enforcement of environmental laws, regulations, and permit conditions is a critical part of the Department's role. The existence of adequate administrative, civil, and criminal penalties is necessary to ensure program credibility and to deter those who would profit from activities that degrade air quality, endanger drinking water supplies, and destroy resources important to our future. Enforcement is a multi-level tool that must be fairly but firmly applied. The need for and the kind of enforcement action used in any given situation should be carefully considered before enforcement steps are taken.

The best and most carefully thought out enforcement mechanisms are of no value if they are unused. . . . In the vast majority of cases, enforcement will not be necessary to the satisfactory conclusion of interactions between the Department and the individual or business. Nevertheless, an awareness in the regulated community that the Department is able to properly use enforcement tools will pave the way to cooperative compliance with necessary regulatory controls.

Purpose

ADEC and EPA have drafted this agreement in an attempt to

- * Develop a consistent compliance/enforcement strategy for those areas of each program that are identical or similar to all other programs.
- * Clarify the roles and responsibilities of ADEC and EPA with regard to all programs covered by the relevant state and federal laws.
- * Establish clear priorities and attainable compliance goals that address ADEC's limited resources, as well as the remote nature and unique social and cultural characteristics of much of Alaska.
- * Retain those aspects of compliance/enforcement that are program-specific or driven by aspects of the law not present for other programs.

Federal Laws

The following federal laws govern compliance and enforcement procedures in Alaska:

Federal Act	Federal Statutes
Clean Air Act (CAA)	42 U.S.C. 7401-7671q
Clean Water Act (CWA)	33 U.S.C. 1251-1387
Safe Drinking Water Act (SDWA)	42 U.S.C. 300f-300j-26, (including the 1986 Amendments) 40 C.F.R. Parts 141 and 142
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)	7 U.S.C. 136-136y
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) -- Superfund	42 U.S.C. 9601-9675

Each state that seeks to operate programs subject to these federal laws must develop compliance and enforcement procedures that will carry out the purposes of those laws.

Alaska Laws

The following programs are subject to this uniform compliance and enforcement agreement:

Federal Statute	ADEC Program	Alaska Statute	Alaska Regulations
All programs:	Pollution Prevention	AS 46.03	
CAA	Air Quality	AS 46.03, AS 46.14	18 AAC 50
	I/M	AS 46.03	18 AAC 52
	Oxyfuel	AS 46.03	18 AAC 53
CWA	Water Quality	AS 46.03	18 AAC 70
	Groundwater Protection		
	Wastewater	AS 46.03	18 AAC 72
	Clean Water Fund	AS 46.03	18 AAC 76
SDWA	Drinking Water	AS 46.03	18 AAC 80
FIFRA	Pesticides	AS 46.03	18 AAC 90
CERCLA	UST	AS 46.03	18 AAC 78
	LUST		
	Contaminated Sites		

STATE-FEDERAL RELATIONSHIP

ADEC and EPA share the mutual goals of

- * protecting public health and the environment
- * maintaining and improving air, land, and water quality
- * ensuring proper management of wastes and pollutants
- * providing a stable regulatory climate
- * carrying out their functions in a timely manner

ADEC has accepted responsibility from EPA for certain programs. ADEC has differing responsibilities regarding administration and enforcement, depending on whether it has been delegated, authorized, or granted primacy. Definitions of each category, and the ADEC programs that are within each category are as follows:

- * **Delegation** means that ADEC has accepted responsibility for most of the major components of a federal program.

Air Quality Improvement Program
Air Quality Maintenance Program

- * **Authorization** means that ADEC is authorized by EPA to administer a federal program in Alaska, incorporating federal rules into state rules.

Hazardous Waste Program has been eliminated because of budget constraints.

- * **Primacy** means that ADEC has the primary responsibility for enforcing state and federal laws, as well as for managing and administering the entire program.

Drinking Water Program
Pesticide Control Program

Alaska achieves compliance and carries out formal enforcement through the use of compliance orders, civil litigation referrals, and criminal complaints. Formal enforcement, however, is only one tool used to achieve compliance with state and federal laws. In fact, except for a very serious violation, or when voluntary compliance efforts fail, formal enforcement should be the last method used to achieve compliance. Technical assistance, education, plan reviews, permits, inspections, and nonregulatory pollution prevention programs are the mainstay in encouraging compliance with environmental laws.

Alaska's environmental and law enforcement agencies include an Environmental Crimes Unit with a full-time prosecutor, state trooper investigator, legal assistant, and coordinated support from within ADEC. The unit is based in the Anchorage District Attorney's office and concentrates primarily on hazardous waste and water violations and seeking restitution to assist in pollution prevention objectives. A strike force for environmental emergencies has also been organized.

Alaska has worked to upgrade its enforcement capability in several other ways. Concerned state and federal agencies have formed a Resource Protection Subcommittee to the Law Enforcement Coordinating Committee, ADEC staff have undertaken increased enforcement training, and additional classes have been scheduled at the Public Safety Academy in Sitka.

To protect Alaska's air, land, and water quality, ADEC has taken special initiatives to gain greater compliance in the area of seafood waste, onshore and offshore fisheries activity, air permit violations, drinking water monitoring, and other water related requirements.

Because of extensive budget cuts in FY 96, and more expected in FY 97, ADEC is not in a position to actively seek RCRA authorization. The Hazardous Waste program has been eliminated from the FY 97 budget.

ADEC will provide to EPA its end-of-year enforcement/compliance accomplishments to be included in the annual Region 10 Accomplishment Report.

EPA'S ROLE IN ALASKA

EPA's role in states with delegated environmental authorities is to enhance and ensure the effectiveness of state programs and to ensure that compliance is achieved. Strong state enforcement is an essential component to achieving compliance with environmental laws.

States with delegated programs have the first responsibility to identify violators and return them to compliance.

In delegated programs, for sources violating federally-enforceable regulations, EPA cannot relinquish its prosecutorial discretion and thus may take unilateral enforcement action. This will occur only after EPA determines that ADEC has not taken timely or appropriate action concerning a violation or an alleged violation and has so notified ADEC. EPA will also take enforcement action when requested by ADEC.

EPA investigations may be necessary for known or suspected violators in both delegated and nondelegated programs. For nondelegated programs, EPA may conduct case development inspections of a facility at any time, with prior notice to ADEC. For delegated programs, investigations will be conducted with prior notice to and approval by ADEC.

EPA may use federal enforcement authority when

- (1) ADEC requests assistance;
- (2) ADEC lacks appropriate authority;
- (3) ADEC priorities conflict with EPA priorities;
- (4) ADEC fails to achieve timely and appropriate enforcement;
- (5) ADEC, without sufficient justification, issues a deficient penalty that is below the minimum provided in ADEC's enforcement guidelines;
- (6) an EPA order or consent decree is violated; or
- (7) in consultation with ADEC, there are violations of national significance or there are interstate issues involved.

To achieve its goals in Alaska, EPA adopts the following principles:

- (1) For delegated programs, EPA acknowledges ADEC has primary enforcement responsibility. EPA and ADEC will jointly review enforcement cases to identify cases when federal enforcement might be more appropriate than state enforcement.
- (2) EPA's role for delegated programs is to ensure program success. EPA -- through technical assistance, joint inspections, education and training, and federal enforcement when appropriate -- will ensure that ADEC has the necessary tools to enforce environmental laws. If EPA discovers inadequacies in a delegated program, EPA will work with ADEC to correct the problem.
- (3) The success of environmental enforcement has traditionally been measured by the number of cases initiated and penalties assessed. While these measures are important, EPA recognizes their limitations in measuring total environmental compliance. EPA will consider ADEC's alternative methods to measure program success.
- (4) When taking federal enforcement action, EPA will keep ADEC informed of EPA's decision-making unless the success of an enforcement action would be clearly jeopardized.
- (5) EPA will keep ADEC informed about EPA's goals, priorities, and strategies, including national initiatives involving enforcement.
- (6) EPA will encourage joint, coordinated enforcement actions with ADEC to achieve maximum benefit and to present a more united front in the common goal of environmental protection.

Non-Regulatory Strategies and Programs

Before taking enforcement action, EPA will consider the strategies and programs established specifically to bring potential violators into compliance.

ADEC's Cooperative Environmental Community Agreement Program will also be considered before taking enforcement action. This innovative program was initiated by ADEC in 1992 and the agreements specifically list the most important issues in each community, including a nonbinding commitment and strategy to implement the agreement in a cost-effective manner.

POLLUTION PREVENTION MITIGATION POLICY

Preamble

- * It is ADEC's policy to develop and manage the basic resources of water, land, and air so that the state may fulfill its responsibility as trustee of the environment for present and future generations. It is also ADEC's policy to improve and protect the state's natural resources and environment in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being. (AS 46.03.010)
- * It is EPA's policy to prevent or reduce pollution to all environmental media whenever feasible. (Pollution Prevention Act of 1990)
- * It is the policy of ADEC and EPA to use pollution prevention conditions in single and multi-media enforcement settlements involving Alaska enforcement cases.

Pollution Prevention Mitigation

This section of the agreement outlines the approach ADEC and EPA will use to foster pollution prevention mitigation measures in settlements concerning violations of state and federal environmental laws in Alaska. The goal of this policy is to achieve continuous compliance with state and federal environmental laws and to foster pollution prevention through source reduction to reduce or eliminate the root causes of noncompliance. The policy is encouraged to be used in both civil and criminal enforcement settlements involving private facilities, communities, and state and federal facilities. This policy should be emphasized when a pollution prevention project:

- * avoids shifting pollution from one environmental medium to another;
- * addresses recurring violations in which additional regulatory controls may not solve the problem;
- * is likely to succeed;
- * focuses on pollution prevention through source reduction;
- * may provide a direct benefit to the local community;
- * advances pollution prevention research and development opportunities; and
- * targets priority, high risk, waste problems.

Penalty Mitigation

To assess a penalty under an enforcement action, staff shall consider the following:

- * gravity of the threat;
- * history of compliance and noncompliance;
- * economic benefits derived from noncompliance;
- * potential for off-site release;
- * any statutory penalty factors not mentioned above; and
- * other factors deemed necessary by ADEC or EPA

ADEC and EPA will strongly consider adjusting penalties if the violator proposes to correct the violation through a pollution prevention project that is consistent with other applicable policies including the Interim Revised Supplemental Environmental Projects Policy, effective May 8, 1995.

Penalties and the Pollution Prevention Project

All settlements must assure compliance with all state and federal environmental laws. Pollution prevention projects may be considered in determining the appropriate penalty. ADEC and EPA agree that there should be a link between proposed pollution prevention projects and the violation.

Additional Minimum Policy Guidelines

The following are additional minimum guidelines that ADEC and EPA agree to apply to enforcement actions involving pollution prevention mitigation measures:

- * Proposed projects cannot include activities that are already required by state and federal law.
- * Mitigation measures should be structured to limit any liabilities associated with a proposed pollution prevention settlement.
- * To the extent possible and appropriate, no tax benefits from expenses associated with a settlement should be allowed.
- * Settlements involving the use of Oil and Hazardous Substance Release Response Funds (Response Fund) shall comply with statutory obligations requiring the recovery of costs for expenses incurred under the Response Fund.
- * Proposed projects must show a direct environmental benefit and meet the definition of pollution prevention.
- * Proposed projects should emphasize reducing pollution at its source. On and off-site recycling projects are also eligible, though less desirable. ADEC and EPA will consider community-based projects such as "household hazardous waste cleanup events" if they incorporate source reduction and recycling. Projects that consider treatment and alternative disposal options are not eligible.
- * Pollution prevention settlement agreements must result in compliance and should not unnecessarily delay compliance. Compliance delay may be considered if a proposed pollution prevention project will ultimately go beyond compliance (i.e. result in less pollution than allowed by law), and the violator demonstrates the inability to continue operating without additional time to achieve compliance.
- * Pollution prevention projects can mitigate 90% of the gravity component of a penalty in an enforcement action on a dollar to dollar ratio.

- * All proposed pollution prevention projects must include a schedule for completion, including interim deadlines supported by stipulated penalties that ensure progress. The settlement should include provisions for independent compliance monitoring of the project paid for that monitoring by the alleged violator.
- * The settlement agreement must include a mandatory provision requiring compliance if the proposed pollution prevention project fails to achieve the terms and conditions outlined in the agreement or consent order. Stipulated penalties should be collected.
- * Violators proposing a pollution prevention project must agree to prepare a final project summary report. The report shall include a project description, approach, and an analysis of any cost savings and resultant reductions in pollution.

TIMELY AND APPROPRIATE ENFORCEMENT

Timely and appropriate enforcement is determined by policy guidance issued by EPA's Office of Enforcement and Compliance Assurance and Media Programs.

Unless provided otherwise under a specific compliance and enforcement agreement for a specific program, enforcement is typically considered timely if, within 120 days after the event that caused the source to become out of compliance, the source is

- (1) in compliance, or in the process of achieving compliance and making progress that is satisfactory to the State;
- (2) subject to a legally enforceable, expeditious administrative or judicial order with specific milestones and a final date by which compliance must be achieved;
- (3) subject to an appropriate civil penalty that addresses the period during which there was failure to comply; or
- (4) under investigation for criminal enforcement action.

General Guidelines Applicable to ADEC Enforcement Actions

Except as otherwise specifically required, and depending on availability of staff and other resources, as well as ADEC and EPA priorities, the following general guidelines will be followed in all enforcement actions subject to this agreement:

- (1) Sampling quarters will be based on calendar quarters; First quarter (January, February, March), Second quarter (April, May, June), Third quarter (July, August, September), and Fourth quarter (October, November, December).
- (2) All violations should be responded to and have a record of actions taken.
- (3) The enforcement sequence in this agreement should be followed to bring a facility or system into compliance. The action to be taken is generally based on a series of violations in a 12-month period.
- (4) If a formal enforcement action is commenced, staff should continue to track the progress of the enforcement action and compliance. For a facility or system that continues to have violations -- or that begins to come into compliance after formal enforcement action has commenced, contact the AG or DA for guidance.

If the terms or conditions of the formal enforcement action are violated (the system has more violations, violates probation, etc.) consult with the DA or the AG.

(5) Each step in the compliance/enforcement strategy need not be completed before taking formal enforcement. Accelerated enforcement action may be taken if appropriate. The reason for the accelerated enforcement action (severity of violation, environmental risk, compliance history, prior enforcement action, etc.) must be documented and entered into the file and into any computer data system.

(6) Returning to a lower level of enforcement action is allowed only if the reason is justified and entered into the files. See Extenuating Circumstances for examples of when returning to a lower level of enforcement action is justified.

(7) When taking formal enforcement actions the appropriate chain of command must be followed.

(8) A Chronology of Events record should be kept of every telephone call, inspection, correspondence, or other contact with a facility or system. This record must be summarize the activities that lead to a decision to refer the matter to the Attorney General or District Attorney.

(9) If a facility or system has difficulty taking required samples, it should be encouraged to enter into a contract with a private lab. Lab contracts should be considered when developing a BCA, COBC, criminal complaint, or other formal enforcement action.

(10) To make ADEC more visible and to develop strong working relationships with operators, site visits are encouraged, especially when a facility or system has a potentially serious violation.

(11) All communication (written or verbal) concerning the facility or system should be entered into the facility or system subject and data files.

(12) In some cases ADEC will seek help from the Public Health Service, Village Safe Water staff, and/or the Native Health Corporation for issuing and posting of public notices and similar activities in rural native communities.

Extenuating Circumstances

There may be cases when another course of action than that described in this agreement may be considered more appropriate by ADEC to attain compliance. Some of these instances may be:

- * Ownership or operation is new, or has recently changed hands, and new owners/operators have just learned of their compliance responsibilities.
- * Due to oversight by the owner/operator, a required sample was not taken during a particular month, but was taken within the first few days of the following month (with further sampling required during the following month also being accomplished).
- * A sample was taken but was received by the lab more than 48 hours after time of collection ("old sample").
- * Further monitoring during a certain period would only produce information which is already known (i.e. the system is contaminated).

Staff may consider these and other extenuating circumstances before issuing the appropriate enforcement action called for in this agreement. Any extenuating circumstances deviating from stated enforcement strategy should be well documented so that the basis for the alternate action can be reviewed. These circumstances or conditions should be documented in the facility enforcement file, including any computer data system.

Enforcement Sequence

Unless specifically required otherwise in this agreement, the following enforcement sequence should be followed for a typical noncompliance event that is not a significant violation or that does not pose a serious or immediate threat to public health or the environment.

1st violation: Issue first notice: a letter or telephone call to the facility or system, or a conference with the owner or operator after a site visit or inspection, indicating:

- * When the violation occurred.
- * What law or permit condition was violated.
- * What the owner/operator needs to do to return to compliance.
- * A reminder of the importance of the law or condition.
- * When appropriate, a reminder that public notice is required to be given for failure to monitor and/or report.
- * An offer of assistance in achieving compliance.

2nd violation: Depending on seriousness of the violation:

Issue second notice: a letter that includes a reminder that an earlier letter or verbal reminder was issued, and that repeats the information in the first reminder.

or

Issue second response: an NOV. Information in the NOV should include the information in the first response and a warning that a civil or criminal complaint may be filed if compliance is not achieved by a date certain.

3rd violation: Depending on the nature of the violation:

If not done after the second violation, issue a NOV as described for a serious second violation.

or

- * Visit the site if resources allow.
- * If the owner or operator is making efforts to comply, but it may take two or more months to comply, complete a COBC or a BCA.
- * If the owner or operator will not sign a COBC or BCA or is unwilling to cooperate, the appropriate course would be formal enforcement action.

4th violation

If not done after third violation, issue NOV unless facility or system should be referred for formal enforcement.

Formal Legal Action or Compliance Agreements

If it is necessary to file formal legal action or to complete a compliance agreement, the procedures outlined below should be followed.

Civil Actions, such as a compliance order without consent or a civil suit, require the ***Division Director's*** approval. After approval, the complaint and supporting documents will be sent to the AG for filing with the court. After the action is filed, a copy of the information will be sent to ADEC. A formal compliance order, together with a summary chronology of events and supporting documents, after approval by the ***Division Director***, will be sent to the deputy Commissioner for approval.

Criminal Actions, such as summons and criminal complaints, require the DA's approval before filing. Through coordination with the DA, the criminal complaint will be completed, approved by the ***Division Director*** and sent to the DA's office with a summary chronology of events and supporting documents. After approval, the DA may return the complaint and supporting documents to ADEC or file the action with the court.

Compliance Agreements and Compliance Orders

A two-party compliance agreement or order, such as a COBC or a BCA, must be approved by the ***Division Director*** before it is signed. The compliance agreement will be completed and sent to the ***Division Director*** with a summary chronology of events and supporting documents. If a COBC is pursued, the ***Division Director*** may want to confer with the deputy Commissioner before the COBC is issued. After the action is approved, a copy of the information will be sent to program staff.

Sometimes a facility or system needs special help to achieve compliance. The use of a BCA or COBC is allowed in addition to formal enforcement action. Development of a COBC or BCA is at ADEC's discretion. The COBC or BCA should be used when a facility or system has a known deficiency due to lack of equipment, inadequate operator training, lack of financial resources, or lack of lab access. The agreement should be a specific plan agreed to by ADEC and the owner/operator. The agreement should list what help is needed and who and when a particular action is required to be completed.

A COBC or BCA should not be developed for a facility or system that is apathetic or unwilling to support program goals. These systems should be brought into compliance through the use of formal enforcement actions.

The action and priorities of other ADEC divisions and other state departments may be needed to determine the timeframes and help necessary to bring the facility or system into compliance before the compliance agreement or order can be completed.

The appropriate ADEC program manager should be contacted for such things as:

- * providing information and monitoring/reporting training and assistance to a water system operator
- * providing technical assistance

The Division of Facility Construction & Operation should be contacted for such things as:

- * resources and timeframes to provide monitoring equipment and help in obtaining construction loans and grants
- * help in training of operators in use of equipment and reporting requirements
- * providing a Rural Maintenance Worker who can assist in training of the operator

The Department of Regional and Community Affairs assistance should be sought for a public facility or system that does not have a viable government or tax base.

Assistance from the Public Health Service, INS, Regional Health and Native Corporations should also be sought in rural native communities.

In no case should financial or technical assistance be an open-ended proposition. Definite timelines should be established when monetary and technical assistance will end and when compliance should be achieved.

If the deadlines in the compliance agreement have been set but there continues to be an unwillingness to comply, civil or criminal enforcement action should be taken.

UNILATERAL ENFORCEMENT

A policy of "no surprises" between EPA and ADEC will generally be applied to all aspects of compliance and enforcement including inspections, formal and informal enforcement actions, press releases, and release of public information.

Exceptions will be made only if an enforcement action would be jeopardized.

EPA reserves the right to act independently in any implementation or enforcement activity. EPA will, before taking any actions on compliance inspections or enforcement actions, notify ADEC verbally or in writing to coordinate state actions relating to the federal activity.

ADEC reserves the right to act independently under state authority, including enforcement of federal requirements adopted by reference in state regulations.

EPA and ADEC will coordinate closely on enforcement matters, so that each agency will be aware of the other's enforcement activities.

EPA Overview of ADEC Activities

EPA will oversee and evaluate ADEC's performance of functions described in this agreement to assure that performance is consistent with this agreement and all other applicable requirements embodied in federal law. This will be accomplished by:

- (1) review of reports and submittals required by this agreement and federal laws;
- (2) onsite review of ADEC performance in accordance with schedules established for program evaluations;
- (3) considering comments regarding ADEC's performance received from the regulated community, the public, or federal and local agencies. These comments will be brought to the Commissioner's attention before EPA makes any public response to the comments.

If the Director sends a written request for information or documents, ADEC will respond within 20 working days and supply the information or documents. If requested, ADEC will provide access to any file necessary for oversight and evaluation of ADEC's performance of functions described in this agreement.

If, in the Director's judgment, any performance of EPA or ADEC functions is inconsistent with this agreement or current federal policies or laws, he/she shall notify ADEC and take any actions relative to EPA's financial assistance to Alaska in accordance with 40 C.F.R. Part 30.

To guarantee ample advance notice, EPA and ADEC agree to the following:

- (1) EPA will notify ADEC before taking action on a pending overfile action. Except for an imminent or substantial threat to public health or the environment, EPA will attempt to provide notice at least 20 working days in advance to the program manager for the affected program.
- (2) During the 20-day period, ADEC will consult in good faith with EPA regarding appropriate enforcement action to be considered instead of the potential EPA overfile action. If, after 20 working days, EPA is satisfied with the steps taken by ADEC, EPA will reconsider taking an independent enforcement action.
- (3) Before proceeding with an overfile action, EPA will give ADEC at least five working days' notice.

PRESS RELEASES AND OTHER MEDIA CONTACTS

ADEC and EPA are committed to accounting publicly for their compliance and enforcement programs through a variety of methods. Public information (press) releases are one of the basic methods of conveying reports concerning enforcement and may deter noncompliance.

Before ADEC or EPA issues a press release related to a joint enforcement effort or an EPA overfile action, ADEC and EPA will discuss the proposed language of the press release and joint participation in the press release. Whenever possible, a joint press release is encouraged.

Coordination and prior notice is the responsibility of the agencies' public information officers who will work together to ensure that each knows of the proposed press releases.

At least five working days notice will be given to the public information officer for the other agency.

It is the public information officer's responsibility to keep management of the respective agencies informed on the status of press release discussions.

INSPECTION REPORTS

Within 20 working days after an inspection, or within another agreed-upon time period:

- * ADEC will send copies of inspection reports and reports of any accompanying informal actions to EPA. (This does not apply to drinking water sanitary surveys which are reported semi-annually.)
- * EPA will send copies of inspection reports and reports of any accompanying action to the appropriate ADEC program manager.

CONFIDENTIALITY OF CERTAIN DOCUMENTS

General Requirements

- * Under the Alaska public records law, generally, "disclosure is the rule, nondisclosure a rare exception."
- * Even though an enforcement action is planned or pending, that does not mean that everything in the files is subject to the "enforcement-sensitive privilege," and a blanket claim of confidentiality would be inappropriate.
- * Simply because a document is in draft form does not automatically render that document "confidential."
- * After an investigation is completed, generally the documents would cease to be privileged, although it may be necessary to "sanitize" a document that contained the name of an informant.

See ADEC's Public Records Requests Procedures Manual for guidance on partial disclosure, discussion of an informant's rights, sample replies to public records requests, and for a more complete discussion of ADEC's responsibilities as well as other privileges that might apply.

Federal Documents

EPA may withhold a document on a case-by-case basis under the federal Freedom of Information ACT (FOIA), EPA regulations, and EPA policy. If EPA provides such a document to ADEC, to the extent legally possible, ADEC will honor EPA's request to maintain the confidentiality of that public record. EPA reserves the right to review information submitted to ADEC that is claimed to be confidential by the submitter, and will preserve the claim of confidentiality in accordance with procedures in 40 C.F.R. Part 2.

ADEC Documents

Attorney-Client Privilege

This privilege is for the client's protection, not the attorney's, and may be waived by the client. If ADEC contemplates a waiver of that privilege, it is a good idea to check with the authoring lawyer to see if another privilege such as "attorney work product" also applies.

Enforcement-Sensitive Privilege

A document considered "enforcement sensitive" is protected under AS 09.25.120(6)(A)--(G). That law exempts "records or information compiled for law enforcement purposes, but only to the extent that the production of the . . . records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual."

How to Treat Confidential Records

The Alaska Department of Law has advised that one test of whether a document is confidential depends on whether it has been consistently treated as though it were. Here are some general guidelines for how to do that and meet the basic requirements of the Alaska public records law:

- * Mark the document "Confidential." If the privilege that applies (such as Enforcement Sensitive, Attorney-Client, Deliberative Process, etc.) is known, include that information under the word "Confidential." **This should also be done when communicating with Department of Law through electronic mail, but only if the communication is subject to one or more of the privileges.**
- * Create a replacement sheet to place in the subject or reading file where that document would normally appear if it were NOT confidential. Indicate on that sheet (1) the document's date; (2) the addressee's name; (3) the author's name; (4) a general description of the subject matter; (5) the privilege under which the document is being withheld from the public record; and (6) where the document is located.

- * Place the document in a separate file, clearly marked "CONFIDENTIAL" and identify the file from which it was removed (or where it will be filed when the investigation is complete and the need for the privilege no longer exists). Preferably, keep the separate file in a locked drawer, cabinet, or safe. Otherwise consider placing the document in a clearly-marked, sealed envelope within the subject or reading file and reseal it each time it is accessed.

- * As soon as the document ceases to be confidential (after resolution of an enforcement action, after a final agency decision, or for any other reason that disclosure would no longer jeopardize agency action), cross out the "confidential" marking, date and initialing the action, and return the document to the public files. One balancing test is: "Does the department's need for confidentiality outweigh the public's right to know what its public servants are doing?" Doubtful cases are to be resolved by permitting public inspection.

ENFORCEMENT ACTION TRACKING

- * ADEC will provide EPA with copies of all ADEC-issued administrative orders and penalties.
- * EPA will provide ADEC with copies of all EPA-issued orders and penalties.

Computer Entry Codes

To provide for standard terminology in enforcement actions, as well as ease in extracting computer data by enforcement action type, the following (program-applicable) computer entry codes should be used when staff makes entries into a data system enforcement file.

New codes developed by program staff should be reported immediately to the appropriate division director. After an electronic enforcement code data entry transfer program is developed, immediate reporting of new codes will not be required.

The following codes were developed for the Drinking Water program and are provided here as an example of the types of codes that could be used department-wide for many actions that are similar in all programs.

Code	Code Description
1. ADMINACT	Administrative Action
2. BCA	Bilateral Compliance Agreement
3. BWN	Boil Water Notice
4. CASE DROP	Case Dropped
5. CIVACE	Civil Action
6. CIVDA	Civil Action referred to the DA
7. CIVILAG	Civil Action referred to the AG
8. CIVIL	Civil Order
9. CMPOR	Compliance Order (No Consent)
10. COBC	Compliance Order by Consent
11. COMOR	Compliance Order Issued (No Consent)
12. COMPACH	Compliance Achieved
13. COMPLY	Compliance Order by Consent
14. CRIMAG	Referred Case to AG
15. CRIMDA	Referred Case to DA
16. EO	Emergency Order
17. EPACOM	EPA Compliance Schedule for the FAO
18. EPACOMP	EPA Issued Complaint

19. EPAFAO	EPA Issued Final Admin Order
20. EPALTR	EPA Letter to System
21. EPANOV	EPA Issued NOV
22. EPAPAO	EPA Issues Proposed Admin Order
23. GOODGUY	Good Guy Letter For BACTI Monitoring
24. HA	Health Advisory
25. INTROLT	Introduction Letter
26. INTROLTR	Introduction Letter
27. LABELS	OPER, PRI, ST, City, State, Zip
28. LETTER	VOC Thank You Letter
29. LETTER2.40	Good Guy
30. LGLACTOT	Other Legal Action
31. LTR-PUB	Letter From ADEC Reg. Public Notice
32. LTR1	Enforcement Letter 1
33. LTR1-BAC	Enforcement Letter 1 for BACTI Mon.
34. LTR1-INO	Enforcement Letter 1 for Inorganic Mon.
35. LTR1-MUL	Enforcement Letter 1 Multiple Mon.Vios.
36. LTR1-NIT	Enforcement Letter 1 Nitrate Mon.
37. LTR1-RAD	Enforcement Letter 1 for RAD Mon.
38. LTR2	Enforcement Letter 2
39. LTR2-BAC	Enforcement Letter 2 for BACTI Mon.
40. LTR2-INO	Enforcement Letter 2 for Inorganic Mon.
41. LTR2-MUL	Enforcement Letter 2 for Multiple Vios.
42. LTR2-NIT	Enforcement Letter 2 for Nitrate Mon.
43. LTR2-RAD	Enforcement Letter 2 for Nitrate Mon.
44. LTR2-VOC	Enforcement Letter 2 for RAD Mon.
45. LTR3	Enforcement Letter 3
46. LTR3A	Enforcement Letter 3 for Class A Systems
47. LTR3B	Enforcement Letter 3 for Class B Systems
48. LTR3-BAC	Enforcement Letter 3 for BACTI Mon.
49. LTR3-INO	Enforcement Letter 3 for Inorganic Mon.
50. LTR3-MUL	Enforcement Letter 3 Multiple Mon.Vios.
51. LTR3-NIT	Enforcement Letter 3 for Nitrate Mon.
52. LTR3-RAD	Enforcement Letter 3 for RAD Mon.
53. LTR3CK	Enforcement Letter for Check Samples
54. LTR3PUB	LTR3 Requiring Public Notice
55. LTRDEFI	Letter of Deficiencies
56. LTRDEFIC	Letter of Deficiencies
57. NOACTION	No Action Taken
58. NOV	Notice of Violation
59. NOVA	Notice of Violation Class A Systems
60. NOVB	Notice of Violation Class B Systems
61. NOV-BAC	Enforcement - NOV for BACTI Mon.
62. NOVDEFI	NOV for Deficiencies

63. NOVDEFIC	Nov for Deficiencies
64. NOV-NIT	Notice of Violation for Nitrate
65. NOVPR	NOV for Plan Review
66. NOVSMPL	NOV for No BACTI Samples
67. NOVSMPLS	NOV for No BACTI Samples
68. NOVSW	Comprehensive NOV
69. NTCMPL	Notice Compliance Order Intent
70. PHONE	Phone Call
71. PUB	Public Notice by System
72. REFCENT	Referred Case to Central Office
73. REFEPa	Referred Case to EPA
74. SEASLET	Seasonal Letter
75. STARTUP	System Startup for Summer
76. SUMDIS	Uniform Summons, Dismissible Offense
77. SUMNODIS	Uniform Summons, Non-Dismissible Offense
78. SUMNS	Summons
79. SURVEY	Sanitary Survey Letter Follow-Up
80. VERB	Verbal Contact
81. VIONOT	Informal Violation Notice
82. VOCLET	VOC Into Letter
83. WRITOTH	Written Reminder, Other

JOINT DISCUSSION AND EVALUATION MEETINGS

EPA and ADEC commit to assist each other with inspections and enforcement. Both agencies will make all possible efforts to respond to requests for assistance. They commit to plan jointly for training needs and to use the scheduled meetings, and the process for negotiating the State/EPA Partnership Agreement (SEPA), as opportunities to identify needs for training, conferences, and professional exchange.

All ADEC managers who are subject to this agreement will meet with EPA twice a year -- or as requested by either party -- to discuss and evaluate compliance, enforcement, and other relevant issues. These meetings will have written agendas developed by both agencies. The agendas will be available at least 10 working days before the meeting. The results of these meetings will be documented in writing and provided within 10 working days after the meeting. ADEC and EPA will alternately take the lead in preparing agendas and meeting results, to be held alternately in Seattle and Alaska.

In addition to the joint meetings, individual program managers will meet with EPA as described below. If possible, these meetings will be scheduled to occur at the same time as the general meetings.

AIR QUALITY CONTROL PROGRAM

Monthly conference calls between ADEC program staff and EPA will address issues involving newly-identified violators subject to this agreement and compliance efforts.

Quarterly meetings: EPA and ADEC program staff will meet two weeks after the end of each quarter to

- (1) discuss facilities of concern to either agency;
- (2) discuss the compliance status of significant violators, facilities reported or found in violation, and facilities that have achieved compliance by certification;
- (3) exchange current relevant information regarding the subject facilities, including interpretation and applicability of regulatory and permit requirements; and
- (4) develop specific enforcement strategies to return facilities to compliance.

PESTICIDE PROGRAM

Within 30 days after the mid-year and after the end of the budget period, EPA and ADEC will jointly conduct evaluation meetings to review and evaluate accomplishments. ADEC will provide staff, travel funds, and time to complete these reviews, prepare a written report of the program status, and correct noted deficiencies. The report will include a completed EPA form 5700-33H and a narrative statement emphasizing accomplishments not included on the form.

AIR QUALITY CONTROL PROGRAM: ADDITIONAL COMPLIANCE/ENFORCEMENT PROCEDURES

In addition to the general procedures in this agreement, this section of the agreement defines the respective roles and responsibilities of ADEC and EPA for stationary source control and related air quality matters, including criteria and procedures to assess ADEC performance and initiate EPA enforcement of ADEC regulations. These criteria and procedures acknowledge priorities for enforcement based on relative risks by establishing different categories of enforcement action.

EPA is responsible for managing enforcement and compliance activities for other parts of the federal air program (mobile sources, chlorofluorocarbons (CFCs)).

Inspections

The Alaska Compliance Monitoring Strategy is based on EPA's most recent guidance and the qualitative ranking model developed by ADEC Air Quality staff. That ranking method best reflects the composition of Alaskan facilities and is derived from each facility's environmental significance, periods of operation, and compliance history.

ADEC will attempt to inspect each permitted facility annually to evaluate the compliance status of all emission sources with applicable state air regulations and procedures.

Each scheduled facility will be visited as set out in the annual inspection schedule to verify compliance of all emission sources with applicable state air regulations and procedures.

The results of each inspection will be completely documented by the inspector, maintained in the ADEC facility files, and will be submitted to EPA.

Inspections will be based on an onsite evaluation and, if possible, will be unannounced. The evaluation must assess, at a minimum: (1) the operation and compliance status of each source operation and visible emissions; (2) any control device installed to maintain compliance with applicable regulations; (3) emission/process monitoring instruments; and (4) other operating records available or required by permit. The inspector must record observations made and data obtained, indicate whether the facility is complying with applicable requirements, and note specific follow-up on enforcement actions to be taken. ADEC's goal is to have all inspectors certified to conduct Level II inspections.

Standards of documentation will be adequate to evaluate source compliance and provide evidence as the basis for potential enforcement by ADEC or EPA.

EPA will conduct oversight inspections of ADEC with the goal of improving the quality of ADEC's inspections. EPA will ensure that the quality of inspections and reports documenting the inspections is consistent and that the reports are complete. EPA will provide guidance, either on a case-by-case basis, or generally to assist ADEC in improving its program.

EPA and ADEC will cooperate in planning a program of oversight inspections and, by July 15, will agree on a number of oversight inspections to be conducted to evaluate each inspector. Based on discussions with ADEC, by July 15, EPA will propose a tentative facility list of oversight inspections from July 1 to December 31. By January 15, EPA will propose a tentative list of inspections from January 1 -- June 30. EPA will coordinate with ADEC on scheduling and participating in these inspections. If a scheduling change is anticipated by EPA or ADEC, that agency will notify the other agency. Final arrangements will be made no later than two weeks before the scheduled inspection.

EPA may use contractors for training purposes, case development inspections, or oversight inspections. When used to perform case development or oversight inspections, that use will generally be limited to those instances when specialized technical expertise is required. Contractors will not be used for inspections without conferring with ADEC.

EPA will take the lead on inspections for facilities subject to nondelegated New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations that are not subject to the ADEC permitting requirements.

ADEC will inspect facilities of concern for conformance with state regulations when there is adequate justification such as suspected violations of state requirements.

Enforcement

Table 1 depicts the following four categories of enforcement activities discussed below:

- * Activities in programs delegated to ADEC that address significant violators, as defined by EPA in guidance on "Timely and Appropriate (T&A) Enforcement Response to Significant Air Pollution Violators (SVs)" dated February 7, 1992.
- * Activities that address other violators (noncompliance facilities) of regulations delegated to ADEC.
- * Activities that address significant violators in programs not delegated to ADEC.
- * Activities that address noncompliance facilities in nondelegated programs.

TABLE 1: CATEGORIES OF ENFORCEMENT ACTION COVERED

	Delegated Program	Nondelegated Program
Significant Violator	State lead/EPA oversight	EPA lead/EPA informs state of all actions
Noncompliance Facility	State lead/reduced level of EPA oversight	EPA lead/EPA informs state of general approach

In delegated programs, for sources violating federally-enforceable regulations, EPA cannot relinquish its prosecutorial discretion and may take unilateral enforcement action, but only after EPA has determined that ADEC has not taken timely or appropriate action and has notified ADEC of its decision.

Delegated programs refer to programs in an EPA-approved SIP and programs delegated to the state under Sections 111 and 112 of the Clean Air Act (CAA). Attachment 2 lists programs currently delegated to the State of Alaska under Sections 111 and 112 of the CAA.

EPA points out that these regulations are dynamic and commits to sending ADEC copies of any changes in federal regulations under these provisions. ADEC understands that if the State wishes to keep delegation of programs listed, ADEC must revise its regulations and reapply for delegation when federal rules change. If ADEC does not take action to revise its rules after a federal rule is revised, EPA will withdraw program delegation and assume primary enforcement authority, as required by Sections 111(c) and 112(l) of the CAA.

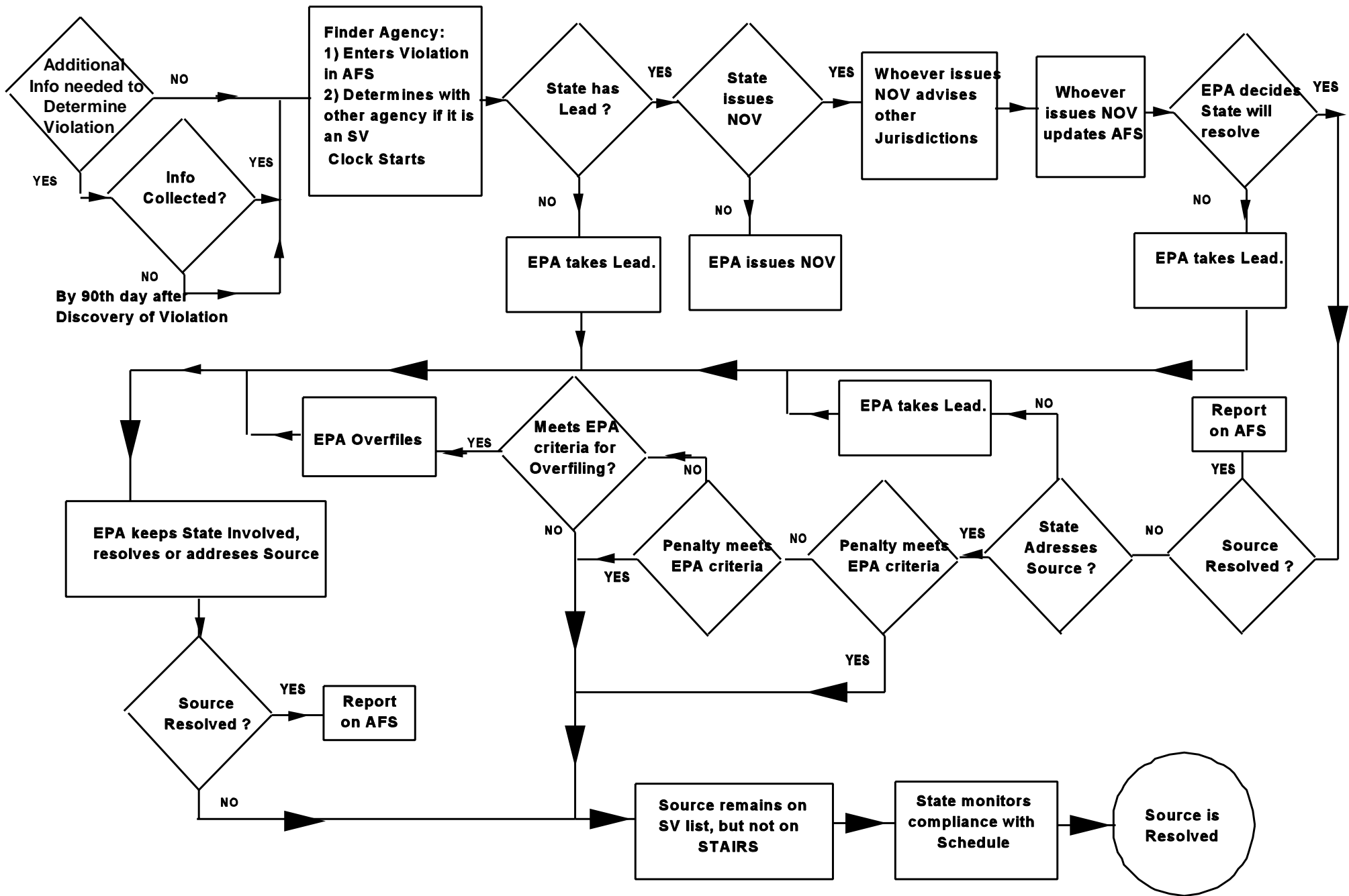
Significant Violators (SVs) in Delegated Programs

EPA and ADEC agree to base their procedures on EPA's guidance on enforcement response for SVs. This guidance has the goals of encouraging cooperative resolution by all responsible parties, encouraging agencies to give priority attention to violators they believe are most environmentally important, and permitting flexibility.

EPA and ADEC agree that the State shall generally be in the lead in enforcement matters with EPA providing needed support.

The "Timely and Appropriate Guidance" identifies factors EPA and ADEC will use to determine who issues an NOV, who takes the lead in enforcement, timelines for appropriate action, adequate evidence for determining a violation, and when the lead should transfer from ADEC to EPA. Flowchart 1 describes this process. Table 2 outlines a protocol for the major decisions involved in that process, including exchanges of information to take place in the monthly conference calls and through the Airs Facility Subsystem (AFS).

ADEC agrees to review and comment on any future EPA guidance.



Flow Chart showing process of EPA/Alaska DEC Interactions Based on EPA's
Timely and Appropriate Guidance (2/7/92)

TABLE 2

KEY DECISIONS: ENFORCEMENT CASES CONCERNING SIGNIFICANT VIOLATORS IN DELEGATED PROGRAMS

Decision		Who Decides?	Criteria for Decision	Who Needs to Know?	How is Info about Decision Exchanged?	By When?
1	Has a violation been identified or is additional information needed to determine violation?	Finding Agency (usually the state)	- Is there a violation of federal or state statute, regulation or an EPA-approved SIP?	Other Agency- (usually EPA)	Through monthly enforcement call or other agreed-upon procedure	Within 30 ¹ days of finding alleged violation (Day Zero)
					AFS ²	Monthly
2	Information collected?	Finding Agency	- same as above	Other Agency- (usually EPA)	Through monthly enforcement call or other agreed-upon procedure	Within 90 days of finding alleged violation
3	Is violation significant?	EPA and ADEC	- Criteria listed in Section II.2. of this document, based on EPA's "Timely and Appropriate Guidance," issued 2/7/92	EPA and ADEC	Through monthly enforcement call or other agreed-upon procedure	Within 30 ³ days of finding potential violation (Day Zero)

¹Unless additional time (no more than 90 days after finding potential violation) is necessary to determine whether a violation has occurred.

²EPA sends updated AFS reports to Alaska monthly; Alaska annotates reports and returns within 10 days

³Same as Footnote 3

Decision		Who Decides?	Criteria for Decision	Who Needs to Know?	How is Info about Decision Exchanged?	By When?
4	Does the State have the lead and does the State make the commitment by Day 45 to issue the NOV?	EPA and ADEC	- Availability and capability of resources - Consistency with SEPA or other implemented policies	EPA and ADEC	Through monthly enforcement call or other agreed-upon procedure	At Day Zero
5	Has the lead agency issued NOV or FOV?	Lead agency	- Lead agency's criteria--but if the state does not issue, EPA <u>must</u> issue NOV or FOV	EPA and ADEC	Through AFS <u>and</u> monthly enforcement call or other agreed-upon procedure	Within 45 days after Day Zero
6	Has EPA decided that the state is close to addressing or resolving the problem and that further deferral is necessary?	EPA	- Source resolved, or - Source is on an acceptable Compliance schedule	ADEC	Monthly call	90 days after Day Zero
					AFS	Monthly
7	Is the source resolved?	ADEC	- Source is in compliance	EPA and ADEC	Monthly call	
					AFS	Monthly until Day 150

Decision		Who Decides?	Criteria for Decision	Who Needs to Know?	How is Info about Decision Exchanged?	By When?
8	Has the state addressed the source?	EPA	<ul style="list-style-type: none"> - Source on an enforceable Compliance Schedule, or - State has referred case to EPA 	ADEC	Through monthly enforcement call or other agreed-upon procedure AFS	150 days after Day Zero (if EPA takes over lead, by Day 190)
9	Does the penalty meet EPA's criteria?	EPA	- State applies a penalty policy recognized by EPA that takes into account the economic benefit of noncompliance	EPA	By telephone, case-by-case	By Day 150 or Day 190 with lead change
10	Does the case meet EPA's criteria for overfiling?	EPA	<ul style="list-style-type: none"> - State or local penalties fail to consider economic benefits of noncompliance - Available federal resources - Federal enforcement priorities 	ADEC	By telephone and by letter, case-by-case	Before EPA overfiles

Noncompliance Facilities in Delegated Programs

ADEC will follow procedures it has developed for addressing violators that are not SVs as defined in EPA's guidance. EPA and ADEC will work cooperatively to develop concurrent reporting processes to complement the procedures used to resolve SVs. When possible, progress toward the resolution of violations of delegated programs will follow the SV procedures.

ADEC will be in the lead in enforcement matters, with EPA providing needed support. ADEC may seek EPA assistance for technical matters or for federal enforcement actions.

Significant Violators in Programs Not Delegated to ADEC

In nondelegated programs such as NSPS and NESHAP, EPA will follow the "Timely and Appropriate Guidance" and the decision protocols in Table 2.

EPA will pre-notify appropriate ADEC staff of inspections and proposed enforcement action in monthly conference calls, will update information in AFS, and provide copies of correspondence related to EPA action to ADEC.

Other Violators (Noncompliance Facilities) in Programs Not Delegated to ADEC

EPA will enforce programs for "noncompliance facilities" that are not SVs and that may be in violation of programs not delegated to ADEC. EPA will weigh competing priorities in addressing these sources. If possible, EPA will follow procedures outlined in the "Timely and Appropriate Guidance." EPA will give ADEC prior notice of inspections and proposed enforcement actions.

Record Keeping and Reporting

EPA and ADEC commit to maintaining the AIRS Facility Subsystem (AFS) as a complete and accurate inventory of the air quality of specific classes of facilities in the State (for example, Class A1 and A2 facilities).

Each month ADEC will send EPA, in hard copy, the following information that was issued or collected during the previous month regarding facilities with State air quality control permits:

- * Minimum data elements required by EPA's April 10, 1984, "CDS Data Requirements" (Region, Source name, Address, City name, County name, State abbreviation, Zip code, Air program code, Air program status, Pollutant air quality control indicator, Standard industrial class code, Pollutant classification, Pollutant compliance status, Action type, Date achieved)
- * Excess emissions from continuous emission monitoring systems (reported quarterly)

* Results of source tests

As described in Table 2, EPA will update AFS and send updated reports to ADEC monthly. EPA will not alter the AFS information for which ADEC is responsible without discussing the data with ADEC. EPA and ADEC will designate one person and one alternate as the interagency contact for matters related to the AFS.

ADEC will provide EPA with copies of each formal enforcement action including warning letters, NOV's, compliance orders, civil or criminal actions, and any follow-up actions.

ADEC will maintain documentation of inspections, results, and any follow-up activities in ADEC facility files. Complete copies of source test reports will be kept in ADEC files. The reports will be available to EPA on request.

To summarize the status of enforcement actions taken by ADEC and EPA on active cases, EPA will send ADEC a Monthly Violator Report by end of each month. The report will contain the active list of SVs, noncompliance facilities, and any proposed additions with justifications for such actions. A monthly call between EPA and ADEC will take place to discuss information on new violators and the status of ongoing enforcement actions.

To summarize the status of information on "past" SVs [SVs already subject to a COBC, until the source is returned to compliance], EPA will maintain a separate list of these violators and send the list to ADEC monthly. ADEC will respond within five days of receipt of the list with updated information on the status of any listed facility. These comments may be conveyed to EPA by phone or in writing. EPA may request more specific or more frequent reporting for certain time periods in response to Congressional or EPA top level management demands. ADEC will make reasonable efforts to meet these requests. In addition, information not available in AFS will be provided by ADEC within five days after receiving a written request by EPA. EPA will attempt to keep these requests to a minimum.

Multi-media Inspections

EPA and ADEC may enter into a special agreement to conduct joint multi-media inspections to ensure they are carried out in a coordinated manner. It would also ensure that reports are generated promptly, and that there are no surprises between the agencies. EPA's contact for this is the Alaska Operations Office and the Office of Enforcement.

Guidance on Negotiating a Compliance Monitoring Strategy

Guidance for Incorporating the Compliance Monitoring Strategy into SEPA

The Compliance Monitoring Strategy (CMS) affords ADEC increased flexibility in targeting inspections. It aims to

- * identify ADEC objectives in relation to available resources through the development of an inspection plan;
- * identify significant state concerns when they differ from national priorities;
- * ensure effective oversight of the air compliance monitoring program;
- * assure emission standards are met through effective use of compliance monitoring activities.

The rationale for the selection of sources should be discussed with the CMS coordinator before the plan is implemented. ADEC commits to provide, at least 45 days before the beginning of the fiscal year, the following information:

- * ADEC's objectives for its inspection plan
- * An inspection plan based on national and state priorities, including:
 - A list of sources (with multiple inspections noted), segregated into Group I (all class A SIP, class A & B NSPS and nontransitory NESHAP stationary sources) and Group II (all other sources subject to EPA or ADEC requirements)
 - Rationale for selection of sources
 - Estimated resource allocation for Group I and Group II sources
 - Justification for substitution of Group II sources for Group I sources
- * Minimum inspection resource base (reference level)
- * Estimated resource allocation for Group I and Group II sources

ADEC commits to negotiating the plan with EPA before the beginning of the fiscal year, so that the inspection commitments in it can be included in the SEPA commitments.

ADEC commits to reporting all Level II inspections of sources in the submitted inspection plan to EPA in the AIRS Facility System no later than 30 days after the inspection.

DRINKING WATER PROGRAM:

ADDITIONAL COMPLIANCE/ENFORCEMENT PROCEDURES

In addition to the general procedures in this agreement, this section of this agreement defines the respective roles and responsibilities of ADEC and EPA for the Alaska drinking water program.

Purpose

To provide a uniform framework for directing actions by staff in responding to Class A and Class B public water system violations of state monitoring requirements and contaminant standards for total coliform, chemical, radiological, and surface water treatment.

Implicit in this agreement is the understanding that the Drinking Water Program does not have adequate staff and financial resources to implement all the requirements. The portions of the strategy that can be implemented will be established during the budget process, development of the SEPA agreement, staff work plans, and quarterly compliance meetings.

[NOTE: The Drinking Water Program is in the process of revising their Compliance Enforcement strategy. A new draft compliance enforcement strategy has been completed, which should be final late summer or fall 1996. The revised draft strategy has eliminated some of the enforcement steps in order to expedite compliance actions. The priority scheme and response schedule has evolved into a table format, referred to as the "Compliance and Enforcement Priority Table". The current Drinking Water Program Work Plan, included in the FY 97 SEPA document, reflects the revised (draft) strategy.]

General Guidelines Applicable to All Drinking Water Enforcement Actions

- * In addition to the guidelines in this agreement applicable to all programs, the following general guidelines apply specifically to the Drinking Water Program:
 - (1) To make the Drinking Water Program more visible and to develop strong working relationships with system operators, site visits are encouraged, especially when a system has an acute MCL violation.
 - (2) All communication (written or verbal) concerning the water system should be entered into the PWS and AREV files.
 - (3) ADEC may seek help from the Public Health Service, Village Safe Water staff, and/or the Native Health Corporation for issuing and posting of public notices in rural native communities.

Priority of Action Guidelines

1. Respond to acute health risk violations:
 - a. Waterborne disease outbreaks
 - b. Total Coliform MCL violations, when fecal coliform or E.coli are present
 - c. Nitrate/Nitrite MCL violations
 - d. SWTR; Treatment Technique (disinfection or filtration)
 - e. Chem/Rad
2. Respond to other MCL violations or treatment technique violations
3. Develop and implement two-party compliance agreements/orders for systems with a history of noncompliance
4. Respond to monitoring or reporting violations
 - a. Class A systems
 - b. Class B systems
 - i. TCR
 - ii. Nitrate/Nitrite
 - iii. SWTR
 - iv. Chem/Rad

TOTAL COLIFORM RULE VIOLATIONS

Monitoring and Reporting Violations

Follow the general enforcement sequence set out in this agreement for the following categories:

1st violation (monthly or quarterly monitoring)

2nd violation (monthly monitoring)

2nd violation (quarterly monitoring)

3rd violation (monthly monitoring)

3rd violation (quarterly monitoring)

4th violation (monthly monitoring)

Confirmed Monthly and Acute Maximum Contaminant Level (MCL) Violations

(Follow-up to positive total coliform samples)

The actions outlined in figure 1 should be followed when responding to positive total coliform samples. The appropriate path of action will be determined by responses to the previous sequences of events.

If repeat samples confirm the presence of fecal coliform or E.coli, ADEC should react immediately by notifying the system and contacting the appropriate division director, PHS/INS, Regional Health Corporation (if the system is a rural native community) to limit the consumption of water and take appropriate remedial measures.

The state epidemiologist should be contacted as soon as a waterborne disease outbreak is suspected. Discretion is allowed in contacting the epidemiologist for confirmed presence of fecal coliform or E.coli.

FIGURE 1



1st MCL violation

(1) Issue first response: a first response letter is mandatory and a telephone call to the system is optional. The letter should be sent return receipt and should include:

- a. when the violation occurred and what they violated;
- b. what they need to do to return to compliance;
- c. a reminder of the importance of regular monitoring;
- d. a requirement to the system to give public notice with mandatory language for the MCL violation;
- e. a requirement to have the system issue boil water notices for acute MCL violations;
- f. a reminder to the system of the required additional samples;
- g. an offer of assistance.

(2) If there is an acute health risk consider issuing a health advisory or an emergency order.

(3) Visit the site if resources allow.

If the system does not contact ADEC within 10 days after receipt of the first letter, or does not issue a boil water notice, or does not give public notice, send and post the appropriate boil water notices (See procedures for issuing boil water notices and giving public notice).

2nd MCL violation or a combination of two TCR MCL/monitoring violations.

(1) Issue a NOV.

(2) Continue with boil water notices for acute MCLs.

(3) Continue with public notice for MCL and/or monitoring violations.

(4) Visit the site if resources permit.

(5) If the system is cooperative but it may take two months or longer for the system to comply, complete a COBC or a BCA. 3rd MCL violation, a combination of three TCR MCL/monitoring violations, or the terms or conditions of the COBC or BCA are violated: issue formal enforcement action (see procedures for approval of formal legal enforcement actions on page 18).

Quarterly Monitoring Waiver

If a Class A system with a quarterly waiver fails to take one quarterly sample, the system should be placed on monthly monitoring. After a system has taken one complete quarter of monthly samples, it may be returned to quarterly monitoring.

Issuing a Boil Water Notice (BWN)

If repeat or routine (discretion is allowed for issuing a BWN for TC+ routine water samples) water samples are tested and are confirmed positive for E.coli or Fecal Coliform, the following procedures should be followed for issuing a boil water notice:

- (1) Contact the system immediately and work with the system to correct the problem.
- (2) Call the division director's office for guidance.
- (3) Have the PWS issue the BWN.
- (4) If possible contact Village Safe Water staff (VSW), PHS/INS, or the Native Health Corporation in the area for assistance with posting in rural native communities.
- (5) If the PWS is a school or food service system, the Division of Environmental Health should be notified.

If there is an **acute health risk** or if the water system is nonresponsive:

- (1) Call the division director's office for guidance.
- (2) If possible, contact VSW, PHS/INS, or the Regional Health Corporation for assistance with posting in rural native communities.
- (3) If no assistance is available, travel to the water system and issue the boil water notice.

Lifting a Boil Water Notice

The following procedures should be followed before a boil water notice can be lifted:

- (1) The repeat samples or the following month's routine samples must be clean.
- (2) The operator must verify that chlorine residuals (if they chlorinate) are at the appropriate levels from two taps, near the entry point and at the end of the distribution system, if possible.

In addition, for systems that have had a boil water notice in place for two consecutive months, the following procedures apply:

- (1) The water system must have no monitoring or reporting, or MCL violations for three consecutive months.
- (2) The operators must show (to department staff and/or designated agent) that they are competent in taking and recording samples accurately.

Competency verification is at ADEC's discretion. During a site visit the PWS operator should be able to walk the inspector through the routine of taking samples etc. ADEC may be able to verify operator competence over the telephone by asking questions.

SURFACE WATER TREATMENT RULE VIOLATIONS

Monitoring and Reporting Violations

Follow the general enforcement sequence of this agreement.

Treatment Technique Violations

The priority for obtaining compliance is:

- Class A systems, over 10,000 people.
- Class A systems, 3301 to 10,000 people.
- Class A systems, 501 to 3300 people.
- Class A systems, 500 people or less.
- Class B systems, over 500 people .
- Class B systems, 500 people or less.

This section refers only to those systems that are inadequately filtered or that met the filtration and disinfection requirements by June 29, 1993.

1st Treatment Technique violation: follow procedures for MCL violation, except that the requirement for the system to issue a boil water notices depends on the treatment technique violation, and there is no requirement for additional samples.

2nd Treatment Technique violation or a combination of two SWTR monitoring/treatment technique violations.

- (1) Issue a NOV, require public notice for Treatment Technique and monitoring violations with mandatory health language.
- (2) Visit the site.
- (3) If the system is cooperative but it may take two months or longer for the system to comply, complete a COBC or a BCA.

3rd Treatment Technique violation, a combination of three SWTR monitoring/treatment technique violations, or the terms or conditions of the COBC or BCA are violated, issue formal enforcement action.

Unfiltered Water Systems

Systems notified that the deadline for installing filtration was June 29, 1993 will be brought into compliance as follows:

1st Treatment Technique Violation

- (1) Issue a treatment technique violation letter within 30 days that requests compliance, requires public notice, and offers assistance.
- (2) If, 60 days from the date of the reminder letter, filtration is not installed that meets the requirements of the SWTR, issue a NOV and complete a BCA or COBC. Send the BCA or COBC with the NOV requesting that the PWS comply with filtration regulations or sign the BCA or COBC. The BCA or COBC requires the system to submit an action plan setting a date when filtration will be installed.
- (3) If, 30 days after receipt of the NOV, the system does not appear to be making progress complying with the filtration regulations or if it appears that the BCA or COBC will not be signed, the system becomes a target for formal enforcement action.

Public Notice Violations

The following procedures should be used to obtain compliance for violations of the public notice requirements of the drinking water regulations.

- (1) Every letter, NOV, or enforcement action will require the PWS to give public notice of the violations.
- (2) The PWS will be required to provide ADEC with a copy of the public notice and information about how the notice was delivered (newspaper, electronic media, or posting, etc).
- (3) Public notice received will be tracked in AREV with the violation record.
- (4) Failure of a system to provide copies of public notice to ADEC is considered a public notice violation.
- (5) Public notice violations will not be enforced unless linked with other enforcement actions.

The following procedures for public notice should be used by ADEC when there is an acute health risk and the drinking water system fails to give public notice:

- (1) Call the division director's office for guidance.
- (2) If the PWS is a rural native community system, contact VSW, PHS/INS, or the Regional Health Corporation for assistance.
- (3) Use the area post office or general store for posting of a health advisory when the water system does not provide public notice. It may also be necessary to go to the local electronic media or community health aide for an imminent health risk.

Generally, ADEC should not give public notice. The public notice given by ADEC does not relieve the system of its duty to give public notice. Public notice not given by the PWS will still be considered violations and tracked as such in ADEC's files.

CHEMICAL AND RADIOLOGICAL VIOLATIONS

Monitoring and Reporting Violation

Issue first response: a first response letter is mandatory and a telephone call to the system is optional. The letter should be sent return receipt and information in the letter should include:

- a. when the violation occurred and what was violated
- b. what needs to be done to return to compliance
- c. a reminder of the importance of regular monitoring
- d. a requirement to the system to give public notice
- e. an offer of assistance including the certified lab list

If the system does not begin monitoring within 30 days from the receipt of the first response, follow the general enforcement sequence procedures for a 2nd violation.

If the system does not begin monitoring within 30 days from the receipt of the second response or does not give public notice: Issue a NOV and require public notice.

If there is no response to the NOV within 30 days, the system becomes a target for formal enforcement action.

MAXIMUM CONTAMINANT LEVEL (MCL) VIOLATIONS

Follow-up to Nitrate or Nitrite MCL violations. An additional sample is required to be taken from the same sampling point within 24 hours of notification. If the mean of the two samples used to determine compliance exceeds the MCL level or the repeat sample is not taken, there is an acute health risk for infants under six months of age and the following action must be taken:

1st MCL violation

(1) Notify the system immediately and issue first response letter for the nitrate/nitrite MCL violation; information in the response letter should include:

- a) a requirement that the system give public notice with mandatory language for the violation;
- b) a reminder to the system of the required additional samples;
- c) an offer of assistance;
- d) a warning to the system of enforcement action if they do not take action to resolve the MCL violation.

- (2) contact the division director's office for guidance;
- (3) if there is an acute health risk, consider issuing an emergency order or health advisory;
- (4) consult with the state toxicologist;
- (5) make sure that the water system gives public notice or that ADEC gives a health advisory with mandatory health effects language;
- (6) take steps necessary to limit water consumption.
- (7) visit the site if resources allow.

If the system does not contact ADEC within 10 days from the receipt of the first response letter or does not give public notice, take the following action:

- (1) issue a NOV requiring public notice with mandatory health language;
- (2) if staff believes the system will cooperate to correct the violation but may take two additional months or longer for the system to comply, complete a COBC or a BCA.
- (3) Visit the site if resources allow.

If the terms or conditions of the COBC or BCA are violated, or if there is no response to the NOV within 30 days, issue formal enforcement action (see procedures for approval of formal enforcement actions).

Follow-up to Other Chemical or Radiological MCL Violations.

1st MCL violation

- (1) Telephone the system and issue first response letter; the letter should include:
 - (a) a requirement that the system give public notice with mandatory language for the MCL violation;
 - (b) a reminder to the system of the required samples;
 - (c) an offer of assistance.
- (2) Contact the division director's office for guidance.

- (3) If there is acute health risk consider issuing a health advisory or emergency order.
- (4) Consult with the state toxicologist if the contamination level is over the URTN level.
- (5) Take steps necessary to limit water consumption, if recommended by toxicologist.

If the system does not respond within 10 days from the receipt of the first response letter or does not give public notice, take the following action:

- (1) issue a NOV requiring public notice with mandatory health language;
- (2) if staff believes the system will cooperate to correct the violation but it may take two additional months or longer for the system to comply, complete a COBC or a BCA.
- (3) visit the site if resources allow.

If the terms or conditions of the COBC or BCA are violated, or if there is no response to the NOV within 30 days, take formal enforcement action.

Quarterly targeting of systems for compliance/enforcement

Using the applicable general or specific enforcement sequence in this agreement for a system with a violation, targets for enforcement action will be identified quarterly. ADEC will select systems for proposed formal action or for two-party compliance agreements/orders for each quarter. Targeting systems will allow limited resources to be directed to the worst, long-term problems and will move the program towards becoming current with all actions. From the list of quarterly targets, ADEC will base its selection of systems for formal enforcement action or compliance agreements/orders using the Priority of Action Guidelines.

By the 30th day after the end of the calendar quarter ADEC will compile the target list. Formal enforcement action or completion of two-party compliance agreements/orders should be done before the end of the following quarter.

Extenuating Circumstances

If one or more of the general extenuating circumstances is applied, the following applies:

- * Waiving monitoring requirements must be done using the Drinking Water Procedures Manual.
- * The violation must be generated in AREV system and reported to FRDS.

Other Public Facilities

Field staff should be aware of regulations (18 AAC 30.965) that require water provided by other types of public facilities to meet the provisions of 18 AAC 80 (drinking water regulations). Field staff should also note that 18 AAC 30.985(c) provides for the closure of a violating public facility.

For a facility with its own water system, the legal steps outlined in the enforcement sequence should be followed before considering closing the facility for monitoring violations.

Food Service Systems

Under 18 AAC 31.440(f) and (g), the Environmental Health division director is authorized to close food service facilities whose water systems do not "supply potable water from a source built and operated in accordance with 18 AAC 80" (from 18 AAC 31.200.(a)).

When responding to coliform positive samples in mobile food service operations the following procedure should be used:

- 1) dump the water;
- 2) shock chlorine treatment the storage tank while filling it with water;
- 3) run a significant amount of the concentrated chlorine treated water through each tap;
- 4) empty the storage tank;
- 5) flush fresh water through the storage tank and through each tap twice;
- 6) take repeat samples for total coliform at each tap.

If the source of the contamination has been identified and the problem resolved, the requirement to take the five routine water samples the following month can be waived according to the Drinking Water Procedures Manual. The system should take only the normal samples that are required for monthly monitoring and reporting.

PESTICIDE CONTROL PROGRAMS ADDITIONAL COMPLIANCE/ENFORCEMENT PROCEDURES

In addition to the general procedures set out in this agreement, this section of the agreement defines the respective roles and responsibilities of ADEC and EPA for pesticide use and sale in Alaska.

Purpose

To protect human health and the environment from the misuse and illegal sale of pesticide products, to minimize duplication of enforcement efforts, and unusual enforcement needs.

Authority and Responsibility

EPA is responsible for administering and enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by assuring that pesticides are produced in accordance with approved chemical formulations and applied or used in a manner consistent with the products' registration. As part of this mandate, EPA samples pesticide chemicals to verify label claims concerning chemical content, and to ensure use of the product in accordance with label directions. EPA also investigates incidents where the misuse of pesticides may have occurred. FIFRA Section 23 (a)(1) empowers the Administrator to "enter into cooperative agreements with States to ... cooperate in the enforcement of this Act." [7 U.S.C. 135 (a)(1)].

The State of Alaska, through ADEC, has authority for the following activities:

- Entry into Cooperative Pesticide Enforcement Agreements
- Use/Misuse Inspections (Agricultural: Nonagricultural)
- Administration of State Certification Program
- Pesticide producing Establishment Inspections
- Experimental Use Permit Monitoring
- Incident (Accident) Investigations
- Marketplace Inspections of Pesticide Sales
- Sample Collection and Analysis

Program Administration

ADEC has accepted primacy for conducting pesticide use investigations under FIFRA. ADEC is therefore responsible for initiating enforcement actions on violations and completing case preparation for EPA enforcement on product violations under FIFRA.

To implement the most comprehensive and cost-effective pesticide program, with available grant money, ADEC will utilize enforcement health officers from the Seafood Inspection and Environmental Sanitation components to conduct nonagricultural use/misuse and marketplace inspections.

Overall administration of the program will be the responsibility of the Laboratory Services/Pesticides Manager and the Director of the Division of Environmental Health.

Each quarter, the Director will assign pesticide inspection outputs to the Seafood Program Manager. The managers will make specific staff assignments and monitor work levels to ensure that quarterly assignments are met.

Upon completion of pesticide inspections, seafood environmental health officers will send copies to the seafood program supervisor. These will be reviewed and then sent to the Laboratory Services/Pesticides Manager.

When violations are noted the program or regional supervisor will consult with the Laboratory Services/Pesticides Manager to assess the violator's enforcement history. Warning letters, notices of violation, and uniform summons will then be issued by the appropriate component under the Manager's guidance. The Laboratory Services/Pesticides Manager will be responsible for tracking inspection and compliance activities, submitting quarterly reports, and drafting the mid-year review, and end of year reviews, and annual SEPA Agreement.

Priority Setting

*** National Priorities**

ADEC acknowledged that the EPA headquarters has committed to advancing the program areas of the National Pesticide program and ADEC will adhere to the priorities that apply in Alaska. The priorities identified for FY 97-98 are as follows:

- (1) Promote pesticide use reduction and support Integrated Pest Management techniques in the regulated community.
- (2) Pesticide Program Activities have been identified as a priority on a national level. Specific activities will be developed cooperatively between ADEC and the EPA Regional Office.

ADEC will continue its enforcement priority ensuring compliance with pesticide cancellations, suspensions and other major regulatory actions.

*** State Priorities**

ADEC is committed to creating and maintaining a system to establish state priorities. This system now uses inspection results, complaints and changes in state or federal law. Each year the state priorities are reviewed and modified to reflect trends or needed changes based on previous inspection results and complaint investigations.

This year's work plan will focus on the following priorities:

- (1) Target industrial users of biocides to ensure compliance with state and federal regulations;
- (2) Scheduling inspection travel to areas of the state that have little or no past history of inspection or enforcement;
- (3) Schedule inspections of greenhouse/nurseries as the largest agricultural group in Alaska. A high priority will be placed upon worker protection compliance inspections to promulgate the fully effective WPS;
- (4) Continue to educate private and commercial pesticide users in the proper use, storage and disposal of pesticide products. Provide educational materials on pollution prevention and IPM techniques whenever appropriate;
- (5) Provide WPS safety training for pesticide handlers and agricultural workers through ACES to meet the needs of the agriculture community. Coordinate with ACES training specialist on scheduling for the safety training program.
- (6) Continue to provide WPS outreach to the regulated community through compliance assistance programs. Work with ACES in implementing a train-the-trainer program and provide this option to agricultural growers/employers upon request.
- (7) Develop an efficient method of identifying canceled and suspended products so the appropriate enforcement may be initiated within a reasonable time period;
- (8) Finalize and submit to EPA Region 10 the draft Generic State Management Plan for Pesticides in Groundwater.

Special Requests from EPA

During the agreement period, ADEC's environmental specialist will perform at least one incident (special) investigation if requested by EPA. All EPA special requests shall be completed within 30 days of receipt by the State unless otherwise agreed to.

Case Preparation

ADEC's pesticide staff and program manager will review the quality and sufficiency of all evidence gathered in the course of any inspection, laboratory, and investigational activities performed under this agreement. When this review reveals evidence of a violation of any provision of Alaska's pesticide laws or FIFRA, the pesticide staff and program manager will accumulate, organize, and document all substantial and relevant evidence thereof and shall either determine the appropriate regulatory action to be taken by ADEC or refer the cases to the EPA Region 10 office.

If EPA or ADEC determine that EPA should pursue an enforcement action brought upon evidence gathered under this agreement the pesticide staff and program manager files will be made available to EPA Regional Office within 30 days after the investigation. EPA Region 10 office will cooperate with ADEC in the development and prosecution of the enforcement action.

If, where EPA has jurisdiction, EPA determines that enforcement action taken by ADEC is not appropriate to the alleged violation, EPA may bring an appropriate enforcement action under FIFRA. If that happens, ADEC shall make available the necessary evidence.

Enforcement

ADEC agrees to:

- 1) The program will also conduct inspections and other compliance monitoring activities in the areas of Worker Protection, Ground Water, and Endangered Species. When inspections are made to monitor compliance with the Worker Protection Standard, a marketplace inspection of the agricultural pesticide used on the premises will be conducted to verify that pesticide labels comply with WPS label requirements. This may require changes in the inspection outputs. These inspections will be reported on the 5700-33H forms. Inspection outputs may also be changed and decreased due to increasing amount of funds that must be directed to the pollution prevention program.
- 2) Maintain a strong enforcement attitude toward the illegal sale of restricted pesticides to uncertified applicators, the illegal sale of suspended or cancelled pesticides, and the misuse of pesticide products that could result in groundwater contamination. Monitor worker protection labeling requirements.
- 3) During all agriculture inspections initiate outreach dialog to assist in the compliance with the ongoing initiative of worker protection for pesticide handlers and agriculture workers.

- 4) Continue to emphasize and develop mechanisms for the proper disposal of unused and cancelled pesticides and empty containers in cooperation with ACES, Boroughs, unorganized boroughs, interested groups and individuals, in compliance with EPA modifications of the hazardous waste regulatory program.
- 5) Issue or deny permits on public pesticide projects, following the procedures established by the revised permit review manual (2/93). Other permits that may be issued are for applications by air, and to waters of the State and 24c.
- 6) Collect pesticide product or environmental samples as needed for enforcement action or under inspection activities. The collection, chain of custody, storage and shipping will be done according to state and federal law. This may include specific product samples requested by EPA Region 10 under their disinfectant efficacy testing program. All samples will be collected according to the pesticide program quality assurance manual.
- 7) Meet the quarterly reporting schedules using the prescribed 5700-33H form. Prepare the mid and end-of-year evaluations within 30 days of the end of the period covered.
- 8) Attend the annual Region 10 EPA/State pesticide meeting, the Western States Enforcement Conference and other inspector training programs as necessary by program staff.
- 9) Act immediately upon special requests from EPA and complete within 30 days or within a time frame agreeable to both agencies.
- 10) Plan for enforcement activities to ensure compliance with the pesticide removal regulations when they are promulgated by EPA. ADEC will outline the specific proposed activities which will be conducted to ensure compliance with the residue removal regulations within nine months of promulgation.
- 11) The state will enforce the worker protection program since its full implementation on January 1, 1995. Enforcement activities will include both use inspections, to assure compliance with the WPS provisions, and marketplace inspections to see if labels reference the WPS. If during the course of inspections, violations are revealed, ADEC will collect evidence and documentary samples to support possible enforcement action.
- 12) Conduct an annual review of inspections prior to the end-of-year review with EPA Region 10 to establish the program priorities for the next inspection period. All pesticide related complaints will be investigated immediately and incorporated into the priority setting mechanism.
- 13) ADEC has developed and implemented a standard Enforcement Response Policy (ERP) when conducting enforcement and compliance activities. This ERP is not provided in the SEPA but can be referenced as a separate document. A copy has been provided to EPA

Region 10.

The State will continue to perform the pesticide monitoring and surveillance functions required for the enforcement of Alaska's pesticide laws. In addition, the State will monitor and conduct inspections for the administration of FIFRA. The State will maintain primary enforcement authority over use/misuse pesticide violations. EPA will maintain enforcement authority regarding product/formulation violations, including but not limited to, nonregistration and misbranding violations. ADEC will complete significant investigations referred by EPA within 30 days.

Significant Cases

A significant case is one which is characterized by any of the following criteria:

Potential criminal activity;

Known or potential adverse human health effect;

Known or potential adverse environmental effect (i.e., fish or domestic animal illness, groundwater contamination);

Involvement of persons having a history of repeated FIFRA violations within the preceding three years;

Suspected multiple violations of FIFRA; or

Use cases involving Worker Protection Groundwater or Endangered Species.

ADEC will inform EPA Region 10 of any cases meeting the above criteria. EPA Region 10 will decide whether to refer these cases under section 26/27 of FIFRA.

ADEC will investigate a significant case in as timely a manner as manpower and state priorities permit. ADEC will endeavor to initiate investigation of a significant case within one week after referral from EPA. Excluding laboratory analysis, this investigation should be completed within 30 day. Enforcement actions pertaining to violations found will also be conducted in as timely a manner as possible. ADEC will endeavor to initiate enforcement action relative to a significant case within 30 days after completion of the investigation including laboratory analysis. ADEC will report the status of a significant case to the EPA Region 10 office in accordance with guidelines herein specified. Investigation and enforcement reports pertaining to a significant case will be made available to the EPA Region 10 office as requested. A copy of the final enforcement action taken on a significant case will be provided to the EPA Region 10 office.

Case preparation for all violations identified by ADEC inspectors will be completed by ADEC

personnel.

Where evidence gathered during the functions required under this program reveals a possible violation of the state pesticide laws, ADEC will pursue the remedies for each violation as provided by the state pesticide laws and enforcement policy. When evidence reveals possible violations of both state and federal laws, there shall be a presumption that ADEC will bring the appropriate enforcement action under the state pesticide laws or refer the case immediately to EPA for enforcement action.

EPA will provide chemist testimony where needed regarding sample analyses. If ADEC does not initiate enforcement proceedings within 30 days after determining that a possible violation of the EPA regulations or laws has occurred, the evidence will be forwarded to the EPA Region 10 office for possible initiation of civil or criminal proceedings under FIFRA. Under these circumstances, ADEC will prepare and make available to the EPA Region 10 office testimony and other evidence pursuant to procedures adopted by EPA and will provide witnesses for informal settlement conferences, public hearings, and appearance in a court of law upon request of the EPA Regional office.

EPA will pay travel and subsistence costs for those witnesses. Where evidence reveals possible violations of FIFRA only, ADEC will immediately forward such information to EPA and as specified above, prepare testimony and provide witnesses as necessary. Cases from ADEC must be formally referred to EPA for action.

Where EPA determines that the enforcement action taken by the State is not appropriate to the violation alleged and, where the agency has jurisdiction, EPA may bring an appropriate enforcement action under FIFRA. In such cases, the State shall make available the necessary evidence.

MID- AND END-OF-YEAR EVALUATIONS:

Within 30 days of the mid-year and after the end of the budget period, Region 10 and ADEC will jointly conduct evaluation meetings to review and evaluate accomplishments for the period in question. ADEC will provide staff, travel funds, and time for completion of these reviews, prepare a written report of the program status, and correct noted deficiencies. The written report should include a completed EPA form 5700-33H as well as a narrative statement emphasizing accomplishments not itemized on the form.

MODIFICATION, SUSPENSION OR TREATMENT OF AGREEMENT:

This Cooperative Enforcement Agreement, when accepted by both parties, shall continue in effect unless modified by the mutual written consent of both parties or be terminated by either party upon a 30-day advance written notice to the other. Grounds for modification include the finding that actual grantee accomplishments differ significantly from the planned accomplishments. These changes may include, but are not limited to, changes in the outputs, changes in the date of performance for specific outputs, or changes in the budget for the period of the agreement. The specific output commitments set forth in this original agreement shall be for the period of July 1, 1996 through June 30, 1997. Mutual agency outputs shall be negotiated annually in that fiscal year's time frame henceforth.

DEFINITIONS OF ENFORCEMENT TERMS

For purposes of this agreement,

- (1) "bilateral compliance agreement (BCA)" means an agreement, developed between ADEC and the owner/operator of a facility or system, that lays out a plan to bring the facility or system into compliance with state law; a BCA is an informal document and is not legally enforceable; however, in the enforcement strategy, because the completion of a compliance agreement may preclude the necessity for formal legal action, if the terms of the agreement are being accomplished, they are considered similar to formal legal action;
- (2) "Class A1 facility" means a facility with the potential to emit 100 tons/year or more of a regulated air pollutant under normal design operating conditions (control equipment or no controls);
- (3) "Class A2 facility" means a facility with the potential to emit 100 tons/year or more of a regulated air pollutant without the use of control equipment, but the potential controlled emissions are less than 100 tons/year;
- (4) "formal action" means a legal action such as a compliance order (CO), summons, civil or criminal complaint, compliance order by consent (COBC), and any other civil or criminal action enforceable by a court;
- (5) "informal action" means a phone call, letter, notice of violation, individual strategy, or similar action that is not enforceable by a court;
- (6) "notice of violation (NOV)" means a formal written communication that informs the facility, system, or source that there has been a violation of an applicable statute, regulation, permit condition, or provision of the State Implementation Plan, advises what the owner/operator needs to do to comply, and reminds the owner/operator, when applicable, that public notice is required to be given; the NOV may be sent by certified mail, return receipt requested, or may be served by ADEC, an Alaska State Trooper, or a process server;
- (7) "phone call" means a call to an individual responsible for the management of the facility or system, describing the need for compliance and of ADEC's intentions if compliance does not occur;

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(8) "pollution prevention" means source reduction as defined under the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the generation of pollutants through

(A) increased efficiency in the use of raw materials, energy, water, and other resources; or

(B) protection of natural resources by conservation;

(9) "reminder letter (first notice)" means a letter sent by regular mail (return receipt mailing is recommended) to an owner/operator describing the failure to meet requirements of state or federal law, or a permit issued under state or federal law (such as failure monitor for total coliform) for a given period, and the need for the facility or system to comply with monitoring or other requirements;

(10) "repeat sample reminder letter" means a letter reminding the owner/operator to take repeat samples and additional routine samples the following month due to a monitoring, reporting, or other violation;

(11) "source reduction" means any practice that

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal; and

(B) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants;

(12) "warning letter (second notice)" means a letter sent to the owner/operator, stating the period during which the facility or system has failed to achieve compliance with state or federal law or a permit issued under state or federal law; the warning letter would include the date of the reminder letter, the future action ADEC will take if noncompliance continues; and, if applicable, the requirement to give public notice; use of certified mail, return receipt requested, is required if resources are available;

For other definitions see AS 46.03, AS 46.14, and 18 AAC 50 (Air Quality Control regulations), 18 AAC 52 (Emissions Inspection and Maintenance Requirements regulations), 18 AAC 53 (Fuel Requirements for Motor Vehicles regulations), 18 AAC 62 (Hazardous Waste Regulations), 18 AAC 80 (Drinking Water regulations), and 18 AAC 90 (Pesticide Control regulations)

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STATE/ENVIRONMENTAL PROTECTION AGENCY PARTNERSHIP AGREEMENT

(SEPA)

FISCAL YEAR 1997

MISCELLANEOUS

QUALITY ASSURANCE - ALL PROGRAMS

It is the policy of ADEC and EPA to produce data of known quality resulting from environmental monitoring and measurement activities. In cooperation with EPA, ADEC has developed a multimedia Quality Assurance (QA) Program plan to ensure fulfillment of EPA's and ADEC's objectives.

ADEC will continue to develop and implement provisions of this QA program plan as appropriate. Project specific QA plans will be developed as required.

MINORITY/WOMEN/SMALL BUSINESS ENTERPRISE PROGRAM

ADEC supports the federal Minority/Women/Small Business Enterprise (MWBE) Program and Small Businesses in Rural Areas (SBRA) Program and agrees to participate to the following extent: ADEC's overall fair share commitment for SFY 93 is seven percent for MBE and 1 percent for WBE, and one percent for SBRA.

DRUG-FREE WORK PLACE ACT CERTIFICATION

1. ADEC certifies that it will provide a drug-free work place by:

- (A) Publishing a statement notifying employees that unlawfully manufacturing, distributing, dispensing, possessing or using a controlled substance in the recipient's work place is prohibited and specifying the actions that will be taken against employees for violation of such prohibition.
- (B) Establishing a drug-free awareness program to inform employees about:
 - (1) the managers of drug abuse in the work place;
 - (2) the recipient's policy of maintaining a drug-free work place;
 - (3) any drug counseling, rehabilitation and employee-assistance programs that are available; and
 - (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the work place.

- (C) Making it a requirement that each employee to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (A).
 - (D) Notifying the employee in the statement required by paragraph (A) that as a condition of employment under the grant or cooperative agreement, the employee will:
 - (1) abide by the terms of the statement; and
 - (2) notify the employer of any criminal drug statute conviction for a violation occurring in the work place no later than five days after such a conviction.
 - (E) Notifying the federal sponsoring agency within 10 days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction.
 - (F) Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(2), with respect to any employee so convicted;
 - (1) taking appropriate personnel action against such an employee up to and including termination; or
 - (2) Requiring the employee to participate satisfactory in a drug abuse assistance or rehabilitation program approved by federal, state or local health, law enforcement or other appropriate agency.
 - (G) Making a good faith effort to continue to maintain a drug-free work place through implementations of paragraph (A), (B), (C), (D), (E), and (F).
2. The recipient's headquarters is located at the following address. The addresses of all other work places maintained by the recipient are provided on an accompanying list.

Name of Recipient: Alaska Department of Environmental Conservation
Street Address: 410 Willoughby Ave, Suite 105
City: Juneau
State: Alaska
Zip Code: 99801-1795

NOTIFICATION OF ADEC PROGRAM CHANGES

As soon as the Commissioner has information concerning any substantial proposal or pending amendment, rescission, or repeal of any pertinent state statute, regulation, directive, or form, any of which the Commissioner has relied upon in connection with this agreement, the Commissioner will notify the Director and transmit the text of any such change to the Director.

Within 30 days, the Director will determine whether the proposed change would restrict the authority of ADEC to perform in accordance with this agreement. The change may be cause for termination with respect to federal financial assistance.

If federal financial assistance is terminated, the Director may choose to terminate this agreement.

If any significant judicial decision, or an amendment, rescission, or repeal of any state statute, regulation, directive or form described herein occurs for any reason including action by the Alaska Legislature or a state court, the Commissioner will, within 10 days, notify the Director and send a copy of the text of that action to the Director.

MODIFICATION, SUSPENSION OR TERMINATION OF AGREEMENT

This agreement, when accepted by EPA and ADEC, shall continue in effect unless modified by mutual written consent or unless suspended or terminated by either agency upon a 30-day advance written notice to the other.

This agreement will terminate with respect to the Hazardous Waste program when ADEC receives final authorization according to the provisions of 40 C.F.R. Part 271 or in conjunction with termination of federal financial assistance under 40 C.F.R. Part 30.

Grounds for modification include the finding that actual accomplishments differ significantly from the planned accomplishments. These changes may include changes in the outputs, changes in the date of performance for specific outputs, or changes in the budget for the period of the agreement.

Tasks for each fiscal year necessary to accomplish long-term goals for both agencies will be specified with each grant application.

* * *

If a federal amendment to a statute or regulation occurs, ADEC will propose regulatory or statutory changes as soon as state legal and administrative procedures can be carried out.

insert Assurances - Non-Construction Programs -2 pages

insert Procurement System Certification - 1 page

insert Certification Regarding Debarment, Suspension, and Other Responsibility Matters - 1
page

insert Certification for Anti-Lobbying, Contracts, Grants, Loans and Cooperative Agreements -
1 page

Insert Current Indirect Cost Negotiation Agreement with a Federal Agency form